



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 3 - 2003

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Edward H. Murphy
Downstream General Manager
American Petroleum Institute
1220 L Street, NW
Washington, DC 20005-4070

Re: Refiner and importer requirements for downstream oxygenate blending

Dear Mr. Murphy:

The American Petroleum Institute, the National Petrochemical Refiners Association, and a number of individual refiners have informed the United States Environmental Protection Agency (EPA) that recently promulgated state laws banning the use of methyl tertiary butyl ether (MTBE) in gasoline sold in the States of New York and Connecticut will make it difficult to meet the contractual and quality assurance requirements (collectively, QA requirements) set forth in 40 C.F.R. §§ 80.69(a)(6) and (a)(7). These QA requirements apply at terminals that receive reformulated gasoline blendstock for oxygenate blending (RBOB) and blend ethanol to produce reformulated gasoline (RFG). Refiners have informed us that due to the complex gasoline marketplace in New York and Connecticut, it is extremely difficult to track RBOB from the refinery where it is produced to the terminal where it is blended with ethanol.

These regulated parties have asked EPA to amend the RFG regulations to allow an alternative method of meeting the QA requirements, in order to overcome this difficulty. This alternative would consist of a comprehensive program of QA sampling and testing that covers all terminals that blend ethanol with RBOB for use in the New York and Connecticut RFG covered areas. This comprehensive program would be carried out by an independent association that would be funded by an industry consortium. The QA program would be conducted pursuant to a survey plan, which EPA would approve, that is calculated to achieve the same QA objectives as the current regulatory requirements.

We believe that this alternative QA program would result in QA sampling and testing that is equivalent to the current regulatory requirements, and as a result would not result in any adverse environmental impact. Therefore, EPA intends to initiate a rulemaking to establish an alternative QA program option for RBOB sold for use in the New York and Connecticut RFG areas.

Such a program would involve the following elements:

- The QA program must be paid for by the refiners and importers who produce RBOB for the New York and Connecticut RFG covered areas;
- 2. The independent association must meet the independence requirements set forth in 40 C.F.R. § 80.68(c)(13)(i);
- 3. Sampling and testing must be conducted in manner consistent with the applicable provisions of 40 C.F.R. § 80.8 and 40 C.F.R. § 80.46;
- 4. The independent association must maintain all records relating to the QA requirements for a period of at least 5 years;
- 5. The independent association must immediately report to EPA any potential violations involving an oxygenate blender's failure to blend the designated volume of ethanol;
- 6. The independent association must immediately report to EPA any test result that shows less than 9 volume percent ethanol is present in any RFG sample taken from a retail outlet; and
- 7. The independent association must immediately report to EPA any instance where a refiner, importer, terminal, distributor, carrier or retailer fails to cooperate in the manner described below.

Each refiner and importer who supplies RBOB to the New York or Connecticut markets will be required to take all reasonable steps to ensure that each ethanol blender, distributor, carrier and retailer cooperates in this program. This cooperation includes the following:

Allow the collection of samples by the independent association;

Upon request, provide to the independent association copies of product transfer documents and other information regarding the source of any gasoline received, the destination of any gasoline distributed, the ethanol blending instructions for RBOB, and the rate that ethanol was blended; and

Include on all product transfer documents provided to distributors, carriers and retail outlets the identification of the terminal where the RBOB and ethanol were blended to produce RFG, and the ethanol blending rate specified for the RBOB.

Pending this rulemaking, I am exercising enforcement discretion with respect to the requirements of 40 C.F.R. §§ 80.69 (a)(6) and (a)(7). This exercise of enforcement discretion shall extend to any refiner or importer that voluntarily participates in a QA program, for the RBOB that such refiner or importer sells for use in the New York and Connecticut RFG areas, that includes all of the elements of the alternative QA program that EPA intends to adopt (as described above).

For any refiner or importer meeting the conditions described above, EPA will treat its RBOB as certified under 40 C.F.R. § 80.69(a)(2) based on the volume of ethanol specified by the refiner in the RBOB product transfer document blending instructions, up to a maximum of 10 volume percent. EPA is not granting enforcement discretion for any other requirements of 40 C.F.R. § 80.69, and all such requirements continue to apply.

Where the independent association reports to EPA, or if EPA independently discovers, any potential violation of the RFG regulations, EPA intends to take appropriate enforcement action. Such potential violations include, but are not limited to, failure of the oxygenate blender to add the proper type or amount of oxygenate, as specified by the product transfer documents. 40 C.F.R. § 80.69(b)(1). Where a party fails to cooperate in providing information or allowing sampling, or where the ethanol content of any gasoline sample is measured to be less than 9 percent by volume and the amount of oxygenate measured would result in a violation, this enforcement discretion shall not apply. If a party fails to comply with the parameters of this letter or fails to comply with the oxygenate content requirements of the regulations, this enforcement discretion shall not apply.

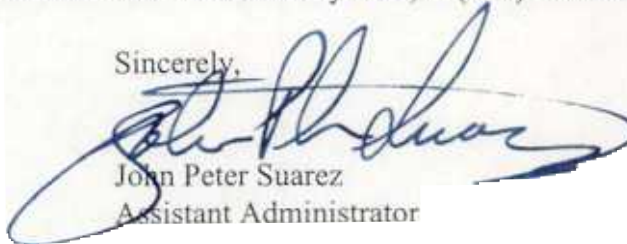
Moreover, this enforcement discretion shall only apply provided that an independent association conducts the program of QA sampling and testing as described in the enclosure to this letter until January 15, 2004; and further provided, that no later than December 15, 2003, an independent association submits to EPA for approval a more detailed plan for conducting the QA program, and that the independent association follows this new plan beginning on January 16, 2003.

The enforcement discretion set forth in this letter shall apply only to refiners and importers who participate in and fund the independent association for each covered area that receives their RBOB. This letter does not, in any way, alter the quality assurance sampling and testing requirements applicable to oxygenate blenders under 40 C.F.R. § 80.69.

This exercise of enforcement discretion may be revoked or modified by EPA at any time in its sole discretion. In addition, this exercise of enforcement discretion terminates upon the effective date of any change to applicable regulations, or on December 31, 2004, whichever is earlier.

If you have questions, please call Mr. Erv Pickell of my staff, at (303) 236-9506

Sincerely,

A handwritten signature in blue ink, appearing to read "John Peter Suarez", is written over a light-colored rectangular background.

John Peter Suarez
Assistant Administrator

cc: National Petrochemical Refiners Association

Enclosure

November 14, 2003

RFG Survey Association (RFGSA)
ETHANOL SAMPLING PLAN
(NY and CT Survey Areas)

Proposal:

To approve the proposed ethanol sampling and testing program as described below. The RFGSA on behalf of its member companies hereby submits the following proposed plan to satisfy the requirements of § 80.69(a)(6) and (a)(7) for companies who participate in the RFGSA.

Purpose:

The purpose of the program is to insure that manufacturer's ethanol blending instructions are followed by terminals and blenders.

Plan:

The first phase of the plan will initiate on November 20, 2003 or upon effective date of EPA enforcement discretion regarding alternative compliance with 40 C.F.R. § 80.69 (a)(6) and (a)(7) whichever is later and end January 15, 2004. The plan will incorporate the following:

- Non member companies must join the RFG Survey Association to participate in the program
- Establish blender contact(s); identify service station brands and location geography by zip code.
- Conduct participant survey to identify ethanol blending terminals and the anticipated blending types and associated volumes.

Establish industry blending type ratios based on aggregate survey data

Establish a sample size based on the estimated blending type ratio's and consistent with 40 CFR 80.69 with the following assumptions:

- Potential Non-compliance rate of 2% or less
- 95% confidence that 98% of the survey areas are in compliance

Annual estimated ethanol samples required is 1024 samples. Samples will be distributed throughout year based on survey area volume.

Follow the approved RFG Survey Design plan methodology to select retail site(s) in the RFG survey areas.

- The statistically derived (randomly selected) representative sample of each survey area will be determined by considering the entire service station population stratified by:
 - Brand
 - Volume – Actual Blender volumes
 - Grade Mix
- Utilize existing RFGSA data, where possible, and augment with additional surveys and sampling to meet the ethanol sampling plan requirements
- Test sample for Oxygenate and follow the Ethanol Sampling Plan protocol listed below. (If sample contains MTBE > 0.5 vol% – sample will not be used)
In the event of a potential non-complying sample, the Association will attempt to contact the blender to reconcile as outlined in the attached sampling plan protocol.
- **Note: EPA will include instructions in letter to refiners, terminals and blenders to include the identification of the blending terminal and the blending rate specified for the RBOB (Vol %) on the retail product transfer document (PTD) delivered to the retail site.** This element is necessary to facilitate follow-up at the retail site of the 3 most recent PTD.

The Association looks forward to working with EPA on this important program. Please feel free to call me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. J.' or similar, with a stylized flourish at the end.

Sampling Plan Protocol for November 15, 2003 – January 15, 2004

